



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 31.08.2020
CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

WEB COPY

W.P. (MD) Nos.10144 and 10247 of 2020
and
W.M.P. (MD) Nos.9028, 9029 and 8920, 8922 of 2020

The Correspondent,
Sacred Heart Girls Higher Secondary School,
Srivilliputtur - 626 125,
Virudhunagar District.

... Petitioner in W.P.No.
10144/2020

The Correspondent,
Sacred Heart Convent High School,
Srivilliputtur - 626 125,
Virudhunagar District.

... Petitioner in W.P.No.
10247/2020

Vs.

1.The State of Tamil Nadu,
rep. by its Secretary,
Department of School Education,
Fort St. George, Chennai - 600 009.

2.The Director of School Education,
College Road, Chennai - 600 006.

3.The District Collector,
Virudhunagar District,
Virudhunagar.

4.The Chief Educational Officer,
Virudhunagar, Virudhunagar District.

5.The District Educational officer,
Srivilliputtur, Virudhunagar District. ... Respondents
(in Both Cases)

COMMON PRAYER : Writ Petitions are filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records relating to the impugned proceeding issued by the 4th respondent Chief Educational Officer in Na.Ka.No.1261/A4/2020 dated 11.03.2020 and the consequential proceedings of the 5th respondent DEO in Na.Ka.No.639/A5/2019 dated 15.07.2020, quash the same insofar as the petitioner schools are concerned.



WEB COPY

W.P.(MD)No.10144 & 10247 of 2020

For Petitioners :Mr.Isaac Mohanlal, senior counsel
for M/s.Isaac Chambers

For Respondents :Mrs.S.Srimathy, Spl.G.P.in WP(MD)
10247/2020

:Mr.A.Thiyagarajan,
Government Advocate
in WP(MD)10247/2020

COMMON ORDER

As the issue raised in these writ petitions are one and the same or common, at the request of the learned counsel for both parties, both these writ petitions were heard together and are being disposed of with this common order.

2. The prayer in these writ petitions is for a Writ of Certiorari, calling for the records relating to the impugned proceeding issued by the 4th respondent, Chief Educational Officer in Na.Ka.No.1261/A4/2020, dated 11.03.2020 and the consequential proceedings of the 5th respondent, DEO in Na.Ka.No.639/A5/2019 dated 15.07.2020 and quash the same insofar as the petitioner schools are concerned.

3. The petitioners' schools are recognised minority institutions getting aid from the Government for the teaching, non-teaching staff and has been imparting education for several years. The issue is, on 30.01.2020 i.e., the death anniversary of Father of Nation Mahathma Gandhiji, also being considered as Martyrs' Day, it seems that, there had been an agitation by an NGO called "'Thamilaga Makkal Otrumai Medai". In the said agitation, it was claimed by the school side that, the agitation was peacefully conducted by raising some slogans.

4. In the said agitation, among the various public participation, the students of these two schools as well as the teachers also seems to have participated, of course, after school hours. Since the said agitation was not organized by the schools or its Management, that too, it was since conducted after school hours, the Management of these two schools, according to them, had no role to play.

5. When that being the position, it seems that, a notice was issued by the District Educational Officer, Srivilliputtur(R5) on 03.02.2020, seeking explanation as to how the students and teachers in uniform had participated in the said agitation conducted by the NGO called "Makkal Otrumai Medai", where allegedly slogans were raised against the Citizenship (Amendment) Act, 2019. Pursuant to the said show cause notice dated 03.02.2020, both the schools have sent separate reply on 04.02.2020, where the schools have given

<https://hcservices.ecourts.gov.in/hcservices/>



their reply stating that, the agitation against Citizenship (Amendment Act), National Population Register (NPR) and National Register of Citizens (NRC), was not conducted by the school or its Management and the same since has been conducted after school hours, the students and teachers while they were returning from school to their home, voluntarily participated in the protest without any idea of the organizers of the protest. The explanation further stated by the schools is that, it was a peaceful human chain protest without causing any nuisance to the general public and it was also well regulated by the police and therefore, the schools state that, they had a reason to believe that the present notices, which are in reply, issued at the instance of some political parties and some religious outfits in order to damage the reputation of the schools. Therefore, the schools seems to have requested the official authorities to accept the said reply and drop all further proceedings. However, it seems that, not satisfied with the said reply given by the schools management, the official respondents has passed the present impugned orders, thereby, they directed or insisted upon the petitioners schools management to take action against the teachers working in their school, who reportedly participated in the said agitation on 30.01.2020. Aggrieved over the said order passed by the District Educational Officer, the present writ petitions have been filed with the aforesaid prayer.

6. Heard Mr.Isaac Mohanlal, learned senior counsel appearing for the petitioner schools, who would submit that, the said agitation dated 30.01.2020 was not sponsored or supported by the schools management. Neither the school management nor its correspondent has given any directive or permission either to the teachers or to the students to participate in the said agitation. However, since the agitation was organized by some third party/NGO, that too, after school hours, the teachers and students, after closing the school, while they were returning to the home/residence, on voluntary basis participated in the agitation, therefore, for such participation, the Management cannot take any responsibility. However, the learned senior counsel would submit that, on receipt of the show cause notice, seeking explanation from the schools, after having conducted an oral enquiry with the teachers and some of the students, schools have made suitable reply with reasons on 04.02.2020 and in order to appreciate the same, the learned counsel relied upon the following part of the reply dated 04.02.2020 given by the school:

"I respectfully submit that the school has not organized any protest nor instructed nor instigated any students or teachers of the school to conduct any protest against the Citizenship Amendment Act, National Population Register and National Register of Citizens. On 30.01.2020, long after the school hours, when the students and teachers were way back to their home, there was a peaceful people chain protest outside the school



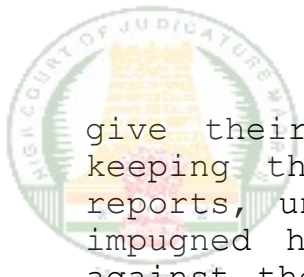
campus. It was informed that the said event was organized commemorating the death anniversary of Mahathma Gandhi. Hence, some of the teachers and students voluntarily participated in the event for a few minutes. No such notice to take part in the protest was ever circulated in the school by the said "Tamilaga Makkal Medai'" as stated in the notice 2nd referred above and the students and teachers did not participate in the protest because of any such notices.

Further, it is a protest against Citizenship Amendment Act, National Population Register and National Register of Citizens. It is the constitutional right of the citizens to express their opinion and sentiments against the same. After school hours, some of the students and teachers voluntarily participated in the protest without any idea about the organizers of the protest. It was a peaceful human chain protest without causing any nuisance to the general public. It was well regulated by the Police Officials. We have reason to believe that the present notices referred above are issued at the instance of some Political Parties and religious outfits in order to damage the reputation of the school and to achieve ulterior purposes.

I respectfully reiterate that the school did not organize any such protest and students were not put to any kind of compulsion, harassment or cruelty. The present notice is without jurisdiction and in violation of the provisions of TN Private School Regulation Act and Rules. Hence, I request your goodself to drop all further proceedings in this regard."

7. The learned senior counsel would also submit that, despite the said explanation having been given, the official respondents have not left the matter at rest and it has been again taken up, which ended the impugned orders, thereby, the official respondents i.e., the District Educational Officer is concerned, has issued a directive to the school management to take action against all the teachers, whose name have been listed in the order itself, by suspending them by way of disciplinary proceedings.

8. In this context, the learned senior counsel would also submit that, the respondents, instead of taking into account the reply given by the schools, seems to have taken two reports sent by the officials. He also pointed out that, two reports relied by the officials, have not been brought to the notice of the petitioner schools management as the reports have not been furnished to the petitioner schools. Had the copy of the reports, otherwise obtained by the officials, been made available to the petitioner schools, certainly, the petitioner schools would have been in a position to



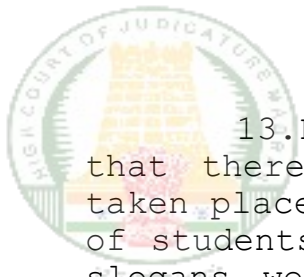
give their reply after perusal of such reports. Without even keeping the schools informed and furnished the copy of alleged reports, unilaterally since the officials passed orders, which are impugned herein, directing the school management to take action against the teachers by way of disciplinary proceedings by keeping them under suspension by immediate order of suspension, is unsustainable, therefore, challenging the same, the present writ petitions have been filed. Hence, the learned senior counsel seeks indulgence of this Court against the impugned orders.

9. I have heard the learned Special Government Pleader appearing for the respondents, who would submit that, on 30.01.2020, an agitation was conducted, for which, according to the respondents, there was no police permission and in the said agitation, which seems to have been called for by an NGO called "Tamilaga Makkal Otrumai Medai" supported by some political parties or outfits, the teachers of the petitioner schools in *en masse* with number of students with their uniform participated.

10. When this was brought to the notice of the officials of the Education Department, immediately, on 03.02.2020, the District Educational Officer concerned issued a notice to the schools, seeking explanation. However, the explanations given by the petitioner's schools dated 04.02.2020 were not satisfactorily to the officials. Therefore, based on further reports obtained from the officials concerned and after having perused the same, they have decided to issue the proceedings through the impugned order, directing the school management to take action against the teachers, who have, without permission or nod of the school management, since participated in the agitation, where, some unpleasant slogans had been raised, thereby, it causes embarrassment to the officials and department, that too with the *en masse* participation of the school students concerned in uniform.

11. The learned Special Government Pleader would also submit that, since power to take disciplinary action against the teacher working in private recognized aided school is vested with the management concerned under the Tamil Nadu Recognized Private Schools Regulation Act, 1973, such a directive was issued by the official respondents, as they cannot straight away take action against the erring teachers. Therefore, the learned Special Government Pleader would submit that, the order impugned need not be interfered with, as it has been issued based on the input received by the officials through various sources.

12. I have heard the submissions made by the learned counsel for both sides and have perused the materials placed before this Court.



13. From the said submission of both sides, one could find that there had been an agitation on 30.01.2020, which allegedly taken place after school hours, where, the teachers and some section of students of the petitioner schools also participated, where some slogans were raised against the policy of the Government and in respect of such agitation, even though it was claimed to be a peaceful one for which reason also was given by the schools management, the officials version is that, the agitation was without any permission from the Law Enforcing Agency, where en masse teachers and students of these schools were permitted to participate and that could not have been taken place without any permission or nod of the schools. However, that was disputed stoutly by the school management in their reply dated 04.02.2020. Consequently, after issuance of show cause notice seeking explanation from the schools, it is the case of the school management that, they conducted an oral enquiry with the teachers concerned and thereafter, they gave reply dated 04.02.2020, where, they have stated that, it was a voluntary participation of the teachers and students of the school, that too, after school hours, while they were returning to home, that too, without knowing what is the intention of the organizers for the said agitation and therefore, the same cannot be taken as if that it was organized or supported by the school management by making the teachers and students participating in such agitation. Such a stand of the school management since has not been accepted by the officials, they now issued the impugned order seeking drastic action against the concerned teachers at the hands of the school management, that are challenged before this Court.

14. In this regard, it is to be noted that, though a reply was given on 04.02.2020 by the school management, in response to the show cause notice dated 03.02.2020, on perusal of the said reply, this Court finds that, admittedly only oral enquiry was conducted by the school management, where there is no proof to show that the school management has given written notices seeking explanation from every teacher, who participated in the agitation and after getting the written reply only the management prepared a comprehensive report for the purpose of submitting the same to the officials.

15. Another aspect also to be noted that, the officials since have not accepted the reply dated 04.02.2020 given by the school management, however, having accepted the two reports or other reports, which they heavily relied upon, from other sources or official sources, have come to the conclusion that, actions have to be taken against the teachers of the schools concerned and accordingly, the present impugned notices have been issued. Whereas, it is the categorical case of the petitioners management, as projected by the learned senior counsel that, those reports allegedly relied by the official respondents have not been furnished to the petitioner schools and without having furnished the reports,



which have been relied upon to take an adverse action against the school management, since the impugned orders were passed, such non-submission of the report would render the entire proceedings vitiated.

16. Therefore, it is the case of the petitioners as submitted by the learned senior counsel that, once the officials come forward to furnish those reports relied by them to the petitioner management and seek explanation of the same, certainly, the school management, after verifying such reports, would give their reply to the satisfaction of the authorities. Apart from that, the learned senior counsel has also agreed that, the teachers, who participated in the agitation dated 30.01.2020 can very well be issued a notice separately against each of them and after getting their explanation in writing, with regard to under what circumstances they participated in the agitation and what was exactly transpired in the said meeting according to their knowledge and after ascertaining all those aspects from their reply in this regard, a comprehensive report would be prepared by the management of both the schools, accordingly, the same would be submitted to the official respondents for their consideration to drop the proceedings initiated by them.

17. In this context, it is to be noted that, the teachers employed in private schools are governed by Code of Conduct as per Rule 16 of the Tamil Nadu Recognized Private Schools (Regulation) Rules, 1974, which reads thus:

"16. Teachers and other persons employed in private schools to be governed by Code of Conduct.-

(1) The teachers and other persons employed in private school shall be governed by the Code of Conduct as specified in Annexure II.

(2) A teacher or other person employed in a private school shall be liable to disciplinary action and punishment, if he violates any provision of the Code of Conduct which may include, dismissal or removal or termination of service or reduction in rank.

(3) Violation of any one of the standards of conduct defined by the school committee shall render the teacher or the other person liable to suitable disciplinary action and punishment which shall not, however, include dismissal, removal, termination of service or reduction in rank.."

18. Under Rule 16(1), the Code of Conduct has been specified in Annexure II under the heading "Code of Conduct for teachers and other persons employed in private school". Among various Code of Conduct regulations made in the said Code, regulations 7, 10 and 11 are relevant in the present context, which reads thus:

"7. No teacher or other person employed in a



private school shall engage himself in any political activity. He shall not be associated with any political party or any organisation which takes part in politics or shall subscribe to or assist in any other manner any political movements.

10.No teacher or other person employed in a private school shall engage himself or participate in any demonstration or activity which is prejudicial to the sovereignty and integrity of India, the security of the State, the friendly relation with foreign States, public orders, decency or morality or which involves contempt of Court, defamation or incitement to an offence.

11.No teacher or other person employed in a private school shall indulge in any criticism of the policies of the Government either directly or indirectly or participate in activity which bring disrepute to the Government.

Adoption of legitimate methods of ventilating grievances, however, shall not be considered as criticism of the Government."

19. In view of the said submissions made by the learned senior counsel appearing for the schools and in view of the fact that some other reports since have been relied upon by the officials, before passing the impugned order to take action against the teachers in *en masse* in these two schools, this Court feels that, the said reports, relied upon by the officials, should have been furnished to the schools management and on the part of the school management, they also should have conducted an enquiry by giving notices to the teachers and after getting their reply, schools management should have prepared a comprehensive report to be filed before the authorities. Since the learned senior counsel has agreed to submit a comprehensive report after having replies from the teachers within reasonable period, this Court is of the view that, taking into account of the circumstances of the case, the following orders can be passed:

(i)The petitioners Management in both cases shall issue notices to the teachers concerned, seeking show cause or explanation from each of the teacher, who allegedly participated in the said agitation taken place on 30.01.2020 allegedly organized by NGO called "Thamilaga Makkal Otrumai Medai".

(ii)On issuance of such notices by the school management, the teachers concerned should give their explanation/reply explaining the circumstances, under which, they participated in the agitation and on receipt of the reply from each of the teacher, all those replies shall be considered and accordingly, the school management shall prepare a detailed comprehensive report with



supporting documents and submit the same to the official respondents.

(iii) The needful, as indicated above, on the part of the school managements, shall be completed within a period of four weeks from the date of receipt of a copy of this order.

(iv) Insofar as the respondents are concerned, they shall furnish the two reports or any other reports they relied upon or going to rely upon in this issue against the petitioners to take any action against them and on receipt of such reports to be furnished by the officials, the school management/petitioners shall, on going through the same, give their reply in detail, besides the comprehensive report to be submitted by the schools as indicated above.

(v) After the comprehensive report by way of reply submitted by the schools as indicated above and also the reply of the schools against the reports to be furnished by the officials, which they rely upon, the official respondents shall consider both reports or both replies comprehensively and accordingly, take a decision as to whether the proposal emanated from the official respondents to take action against the teachers concerned of the schools, can be dropped or not. Till such time, i.e., till final decision is taken in this regard as indicated above by the official respondents after following all these compliances directed above, the impugned orders shall not be given effect to or acted upon and it shall be kept in abeyance.

20. With these directions, both the writ petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Arul

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



To

1.The Secretary,
State of Tamil Nadu,
Department of School Education,
Fort St. George, Chennai - 600 009.

2.The Director of School Education,
College Road, Chennai - 600 006.

3.The District Collector,
Virudhunagar District,
Virudhunagar .

4.The Chief Educational Officer,
Virudhunagar, Virudhunagar District.

5.The District Educational officer,
Srivilliputtur, Virudhunagar District.

+1 CC to M/s.GP (SR-15536[F] dated 01/09/2020)

+2 CC to M/s.ISAAC CHAMBERS, Advocate (SR-15610[F] & 15609)

W.P. (MD) Nos.10144 and 10247 of 2020

31.08.2020

AP(22/09/2020) 10P 9C